

6 Civil procedure

A Civil Procedure Rules

Alisdair Hannah, a barrister, is talking to a visiting group of young European lawyers.

'All cases concerning goods, property, debt repayment, breach of contract (with some exceptions such as insolvency proceedings and non-contentious litigation), are subject to Civil Procedure Rules. The Rules, which came into force in 1999 in England and Wales, made radical changes to civil process in the County Court and the High Court.



The judge performs the role of case manager. The court sets a timetable for litigation, with the parties being under an obligation to the court to adhere to timescales which control the progress of the case. Procedure rules are supplemented by detailed instructions made by the judge which support the rules, known as practice directions.'

B Proceeding with a claim

'Most claims are initiated by the use of a claim form, which functions as a summons. The claim form can be used for different types of claim, for example for specified or unspecified monetary sums, or for the claimant to ask the court to make an order. Once a claim has been issued, a copy is served on, that is, delivered to, the defendant with a response pack inviting them to either admit the claim, using a form of admission, or to defend it, using a form of defence. The response pack also contains an acknowledgement of service form to confirm receipt of the claim, and a counterclaim form for the defendant to use if they wish to claim against the claimant. A defendant must respond within 14 days of service of the particulars of the claim. If the defendant does not respond, judgment may be given in favour of the claimant. The defendant may be able to get a time extension for filing a reply on defence by using the part of the acknowledgement of service form which states an intention to defend the claim.'

Cases are allocated to a regime or track by a procedural judge according to their monetary value. Claims of £5,000 or less are allocated to a small claims track while claims of up to £15,000 are allocated to a fast track. More complex claims with a greater value are allocated to a multi track regime. Fast track directions might include disclosure, where the claimant tells the defence of any relevant documents in their possession. This is followed by inspection, initiated by a written request by the claimant to look at relevant documents held by the defence, and an exchange of witness statements. The multi track regime is intended to be flexible and does not have a standard procedure. In all regimes, parties are encouraged to settle their differences and for this purpose a stay in proceedings, that is, a temporary halt, may be agreed. Case management conferences are often conducted by telephone and give parties the opportunity to review the process and make decisions. If a defendant is ordered to pay by a judge and fails to do so, the claimant can enforce the judgment in the Magistrates' Court.'

Note: The reforms to the Civil Procedure Rules led by Woolf in 1998 included the following changes in legal language:

claim form, formerly known as a writ of summons

specified, formerly known as a liquidated claim (a fixed monetary sum)

claimant, formerly known as a plaintiff

Complete the definitions. Look at A and B opposite to help you.

- 1 – the process by which a claimant may look at written evidence held by the defence
- 2 – the document in which the defendant makes a claim against the claimant
- 3 – the document in which the defendant agrees to the claim made by the claimant
- 4 – the document starting a claim proceedings
- 5 – the process by which the claimant is required to inform the defendant of documents they hold relevant to the claim
- 6 – the document giving evidence by someone who saw or heard something critical to the case
- 7 – the instructions given by a judge on how procedures should be carried out in a case

Make word combinations from A and B opposite using a word from each box. Then use appropriate word combinations and information in B opposite to answer the questions below.

admit
agree to
allocate to
enforce
file
issue
review
serve
set
settle

a timetable
a stay
a claim
the process
the judgment
a claim
a claim on
a regime
differences
a reply

- 1 How does a claim proceeding start?
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- 2 What must a defendant do when he or she has been served with a claim?
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- 3 If both parties want time to try to settle the dispute out of court, what should they ask the court to do?
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- 4 What is the purpose of a case management conference?
.....
- 5 If a defendant is ordered to pay a claimant's costs but does not, what action can the claimant take?
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